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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

VELTEX CORPORATION, a Utah Corporation,

Plaintiff,

vs.

JAVEED AZZIZ MATIN, an individual; TANZILA SULTANA, an individual; SAASHA CAMPBELL, an individual; MAZHAR HAQUE, an individual; ALLEN E. BENDER, an individual; VELTEX USA, INC., a Delaware corporation; VELTEX APPAREL, INC., a California corporation; VELTEX INDUSTRIES, INC., a Delaware corporation; VELTEX EXPLORER, INC., a Canadian corporation; VELTEX CANADA, INC., a Canadian corporation; WILSHIRE EQUITY, INC. *aka* WILSHIRE EQUITIES, INC., a Colorado corporation; AMERICAN REGISTRAR & TRANSFER CO., a Utah corporation; PATRICK R. DAY, an individual; RICHARD M. DAY, an individual; MOORE & ASSOCIATES, CHARTERED, a Nevada corporation; MICHAEL J. MOORE, an individual; CHISHOLM, BIERWOLF, NILSON & MORRILL, CPA *aka* CHISHOLM, BIERWOLF & NILSON, LLC, a Utah limited liability company; BRAD B.

CASE NO. CV10 1746 ABC (PJWx)

NOTICE OF APPLICATION AND APPLICATION FOR ENTRY OF DEFAULT JUDGMENT BY COURT AGAINST DEFENDANTS JAVEED AZZIZ MATIN, MAZHAR HAQUE, WILSHIRE EQUITY, INC. *aka* WILSHIRE EQUITIES, INC., TANZILA SULTANA, MICHAEL J. MOORE, MOORE & ASSOCIATES, CHARTERED, VELTEX APPAREL, INC., VELTEX INDUSTRIES, INC. AND VELTEX USA, INC.; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: February 27, 2012
Time: 10:00 a.m.
Place: Courtroom 680
Hon. Audrey B. Collins

[Filed concurrently with Declarations of Kristen M. Peters and Stephen G. Macklem; and [Proposed] Default Judgment]

BLECHER & COLLINS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

HAYNES, an individual; ANNE TAHIM, an individual; JAAK U. OLESK, an individual; and CARMINE J. BUA, an individual,

Defendants.

PLEASE TAKE NOTICE THAT on Monday, February 27, 2012, at 10:00 a.m., or as soon thereafter as this matter may be heard by the above-entitled Court, located at the Roybal Building, 255 East Temple Street, Los Angeles, California 90012, Plaintiff Veltex Corporation ("Plaintiff" or "Veltex") will present its Application for Entry of Default Judgment Against Defendants Javeed Azziz Matin ("Matin"), Mazhar Haque ("Haque"), Wilshire Equity, Inc. *aka* Wilshire Equities, Inc. ("Wilshire"), Tanzila Sultana ("Sultana"), Michael J. Moore ("Moore"), Moore & Associates, Chartered ("Moore & Associates"), Veltex Apparel, Inc. ("Veltex Apparel"), Veltex Industries, Inc. ("Veltex Industries") and Veltex USA, Inc. ("Veltex USA") (collectively, "Defaulting Defendants").

This Application is made upon the following grounds, as set forth more fully in the supporting papers filed and served with this Application:

1. As set forth in the Declaration of Kristen M. Peters, the Defaulting Defendants were each served with a copy of the Summons and Complaint in this action. The Defaulting Defendants failed to appear or otherwise respond to the Complaint within the time prescribed by the Federal Rules of Civil Procedure.

2. The Clerk of this Court has previously entered the default of Sultana, Moore & Associates, Veltex Apparel and Veltex Industries on June 30, 2010.

3. The Clerk of this Court has previously entered the default of Matin, Haque, Wilshire and Moore on July 2, 2010.

4. The Clerk of this Court has previously entered the default of Veltex USA on November 2, 2010.

5. The Defaulting Defendants are not infants or incompetent persons or in military service or otherwise exempted under the Servicemembers Civil Relief Act, 50 App. U.S.C. § 521.

6. The Defaulting Defendants have not appeared in this action.

7. Plaintiff is entitled to judgment against the Defaulting Defendants on account of the claims pleaded in the Complaint. Namely, that Matin, Haque, Sultana, Wilshire Equity, Veltex Apparel, Veltex Industries, Moore, Moore & Associates and Veltex USA knowingly committed securities fraud; that Matin, Haque and Sultana violated Sections 4(a) and 5(b) of the Uniform Fraudulent Transfer Act ("UFTA") and California Civil Code Section 3439.04(a) & (b); and that Matin and Haque conspired to breach and did breach the fiduciary duties owing to Plaintiff.

8. Notice of this Application for Entry of Default Judgment by Court and the amount requested herein was served on the Defaulting Defendants on February 10, 2012, by U.S. Mail, as required by Central District Local Rules 55-1 and 55-2.

9. The amount of the judgment sought is the sum of $100,078,621, plus pre-judgment interest, reasonable attorneys' fees, and costs, as set forth in the Declarations of Kristen M. Peters and Stephen G. Macklem, submitted concurrently herewith. The total judgment claimed by Plaintiff is calculated as follows:

(a)	Damages, in the amount of:	$100,078,621.00
(b)	Prejudgment Interest of:	$ 751,738.99 ($1,069.33/day)
(c)	Attorneys' Fees pursuant to L.R. 55-3 in the amount of:	$ 2,005,172.42
(d)	Costs and Expenses of:	$ 3,859.95
TOTAL		**$102,839,392.36**

This Application is based on this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of Kristen M. Peters and

Stephen G. Macklem filed herewith, the complete files and records of this action, and upon such other evidence as may be presented at the time of hearing on this Application.

Dated: February 10, 2012

Respectfully submitted,

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
MARYANN R. MARZANO
KRISTEN M. PETERS

By: /s/ Maryann R. Marzano
MARYANN R. MARZANO
Attorneys for Plaintiff
VELTEX CORPORATION

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I. INTRODUCTION

Plaintiff Veltex Corporation ("Plaintiff" or "Veltex") hereby submits its Application for Entry of Default Judgment by Court Against Defendants Javeed Azziz Matin ("Matin"), Mazhar Haque ("Haque"), Wilshire Equity, Inc. *aka* Wilshire Equities, Inc. ("Wilshire"), Tanzila Sultana ("Sultana"), Michael J. Moore ("Moore"), Moore & Associates, Chartered ("Moore & Associates"), Veltex Apparel, Inc. ("Veltex Apparel"), Veltex Industries, Inc. ("Veltex Industries") and Veltex USA, Inc. ("Veltex USA") (collectively, "Defaulting Defendants"). As set forth in the Declaration of Kristen M. Peters submitted herewith, Defaulting Defendants have failed to plead or otherwise defend within the prescribed time required by the Federal Rules of Civil Procedure. The Complaint filed in this action on March 10, 2010, is the pleading as to which the Clerk of this Court entered Defaulting Defendants' defaults on June 30, 2010, July 2, 2010, and November 2, 2010, and is the pleading on which Plaintiff seeks entry of Judgment against Defaulting Defendants.[1] Accordingly, Plaintiff requests that the Court enter default judgment against Defaulting Defendants on the causes of action alleged in the Complaint and grant the relief sought therein, including awarding Plaintiff damages in the amount of $100,078,621, as set forth in the Declaration of Stephen G. Macklem submitted herewith.[2]

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[1] A true and correct copy of the Complaint is attached as Exhibit 1 to the Declaration of Kristen M. Peters ("Peters Decl.") filed concurrently herewith. Although the Clerk of the Court entered the default of Veltex USA as to the First Amended Complaint ("FAC"), filed on July 16, 2010, the FAC did not include any additional allegations regarding Veltex USA. (Peters Decl. ¶ 15 n.1.)

[2] Although Federal Rules of Civil Procedure,Rule 54(c) limits the damages recoverable by a plaintiff following a default judgment to the type and quantity of damages demanded in the complaint, a default judgment exceeding the amount of the prayer will be upheld where, as here, the plaintiff served the defaulted defendant with a copy of the Motion for Default Judgment, which specified the amount sought. Stafford v. Jankowski, 338 F. Supp. 2d 1225, 1228-29 (D. Kan. 2004) (default judgment exceeding amount of prayer upheld where plaintiff served defaulted defendant with copy of motion for default

II. STATEMENT OF FACTS

This action involves a scheme by Defendants to manipulate Veltex' stock and assets. Veltex seeks relief under its claims for securities fraud, the Uniform Fraudulent Transfer Act and breach of fiduciary duty. As detailed in the Declaration of Stephen G. Macklem, submitted herewith, and the Complaint, the scheme involved the issuance of Veltex shares to Matin, his wife, Sultana, Wilshire and purported underwriters controlled by or connected with Matin, for little or no consideration. The Veltex shares were then resold by Matin and his co-conspirators in the scheme to the general public. These sales were promoted by a series of misrepresentations as to the purported revenues and assets of Veltex. The proceeds from the sale of the shares were then converted by Matin and his co-conspirators to their own use or diverted to operating several operating companies controlled by Matin such as Veltex USA, Veltex Apparel and Veltex Industries. The operating companies were held out as subsidiaries of Veltex, but in fact were owned by Matin.

Veltex is a Utah corporation engaged in the sale of wearing apparel in the United States and Canada. Veltex' stock is publicly traded on the "Pink Sheets," an over-the-counter market, under the symbol VLXC. Veltex is a non-reporting SEC company which was reorganized on or about August 2009, following dissident shareholder litigation being instituted in Utah, seeking the ouster of

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judgment, which specified amount sought). In such a case, the defendant's due process rights are preserved, and a default judgment is proper. Id. Here, Defaulting Defendants' due process rights are similarly preserved, as notice of this Application and the amount of the Judgment sought herein was served on Defaulting Defendants on February 10, 2012. (Peters Decl. ¶ 20.) Moreover, Plaintiff's Complaint requests "general damages according to the proof at trial ***in excess of $35,000,000***." *See* Compl., Prayer for Relief (emphasis added); *see also* Ames v. State Fire Suppression, Inc., 227 F.R.D. 361 (E.D.N.Y.2005) (holding that Fed. R. Civ. P. 54(c) did not preclude award of damages that accrued during pendency of the action; Fed. R. Civ. P. 54(c) "does not require plaintiff to have demanded a sum certain in order to recover on default").

Matin, Defendant Saasha Campbell ("Campbell") and Haque from Veltex' management. (*See* Compl. ¶ 4.)

Matin was the controlling shareholder, and until recently removed from that position, the Chief Executive Officer ("CEO") and Chairman of the Board of Veltex. Until he was ordered to transfer five million (5,000,000) shares of Veltex common stock that he owned to Wayne H. Hanson, by U.S. District Court Judge Florence-Marie Cooper in the action entitled "*Wayne H. Hanson vs. Veltex Corporation, etc., et al.,*" Case No.: CV08-02149 FMC (MANx) (the "Hanson action"), Matin was the largest single shareholder in Veltex. (*See* Compl. ¶ 5.)

Matin functioned as the Chairman of Veltex' Board of Directors and its CEO without any oversight by the Veltex shareholders or an independent Board of Directors until he was removed pursuant to Court Order issued by the Honorable Kate A. Toomey on July 21, 2008, pursuant to an action initiated by dissident Veltex shareholders in Utah State Court in the action entitled: *" Robert Fletcher, et al. v. Veltex Corporation, et al.,"* Civil Action No. 080907145 (the "Utah action").[3] (*See* Compl. ¶ 30.)

Defendants' scheme involved the issuance of Veltex shares for little or no consideration to insiders, the manipulation of the subsequent market price and the sale of the shares to investors. Matin embarked on this scheme shortly after he took over the corporation, issuing over Fifty-Seven Million Nine Hundred Seventy-Two Thousand Dollars ($57,972,000) of Veltex shares to himself and his wife, Sultana, without consideration. (Macklem Decl. ¶¶ 16-18, 23-25.) Subsequently, shares were issued for less than their fair value to purported

[3] Matin and Defendants Campbell, Haque, Sultana, Allen E. Bender ("Bender") and Patrick R. Day ("Day") (sometimes collectively referred to herein as "Management Defendants") were all members of the Veltex Board of Directors. Campbell, Haque, Sultana, Bender and Day were subject to Matin's control and did not functioned as independent Directors. (*See* Compl. ¶¶ 1, 30-65.) Campbell and Haque were removed from their positions as Directors of Veltex on July 21, 2008, pursuant to the Order issued by Judge Toomey. (*See* Compl. ¶ 30.)

underwriters who were actually insiders connected to Matin – after reverse stock splits designed to reduce the number of shares and facilitate the issuance of additional authorized shares. (Id. ¶ 14.) Nearly Two Million Two Hundred Thousand Dollars ($2,100,000) of Veltex shares were issued after a 25/1 split and at least another Six Million One Hundred Thousand Dollars ($6,100,000) of shares was issued after a 100/1 split. (Id. ¶¶ 19-20, 31-32.) In an obvious move to avoid the middlemen – the insider/underwriters – Matin formed Wilshire and had Veltex issue millions of dollars of Veltex shares to Wilshire for no consideration. After the 25/1 split, over Three Hundred Thirty Thousand Dollars ($330,000) of Veltex stock was initially issued to Wilshire for little to no consideration and after the 100/1 split, another Twenty-One Million Four Hundred Forty-Eight Thousand Dollars ($21,448,000) of Veltex stock was issued to Wilshire for little to no consideration. (Id. at ¶¶ 27-29.)

The sale of the stock by Matin, Sultana, Wilshire and the underwriters was promoted by a series of misrepresentations described in the Complaint. (Compl. ¶¶ 30-50.) Further, to the extent Matin, Sultana, Wilshire or the underwriters paid anything to Veltex for their purchase of the Veltex shares, or received any proceeds from the sale of the stock by them that was not converted to their personal use, it was diverted to the operating entities owned by Matin.[4] (Macklem Dec. ¶¶ 38-39.)

As if the self-dealing in Veltex' stock was not enough, Matin admitted in the Hanson action that he used Veltex Funds to purchase three homes for himself, including a 15,000 square foot residence in Diamond Bar, California. (Compl. ¶ 51.) Matin's wife, Sultana, also received payments from Veltex, even though she performed no services for the corporation. (Id. ¶ 53.) Of course, these uses of

[4] Veltex USA, Inc., Veltex Apparel, Veltex Industries, Veltex Explorer, Inc. ("Veltex Explorer") and Veltex Canada, Inc. ("Veltex Canada") were all separate and independent corporations established by, wholly owed by and under the exclusive control of Matin. Defaulting Defendants utilized these "Veltex" named companies as part of the scheme. (*See* Compl. ¶ 33.)

corporate funds were never approved by an independent Board nor disclosed to shareholders. (Id. ¶¶ 51, 53.) Further, at least Four Million Dollars ($4,000,000) of inventory and assets that had been held by the operating entities was moved and secreted by Matin and Haque just before a Receiver was appointed in the Utah action; it has never been recovered. (Macklem Decl. ¶¶ 5, 38.)

As a direct and proximate result of Defaulting Defendants' violations of the Federal Securities Laws, fraudulent transfers and conveyances and breaches of fiduciary duties, Plaintiff has suffered damages in the amount of $100,078,621.

III. DEFAULT JUDGMENT SHOULD BE GRANTED

A. Plaintiff Has Complied with All Procedural Requirements for Default Judgment to Be Granted

Pursuant to Fed. R. Civ. P. 55(b), a court may enter a default judgment against a defendant following the entry of default by the Clerk of the Court. *See* PepsiCo, Inc. v. California Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002). In the Central District of California, an application for a default judgment must state: (1) when and against what party the default was entered; (2) the identification of the pleading to which default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is adequately represented; (4) that the Servicemembers Civil Relief Act (50 App. U.S.C. § 521) does not apply; and (5) that notice has been served on the defaulting party, if required by Fed. R. Civ. P. 55(b)(2). *See* C.D. Cal. L. R. 55-1.

Plaintiff has satisfied the procedural requirements for obtaining a default judgment, as set forth in Fed. R. Civ. P. 55(a) and (b), as well as Local Rules 55-1 and 55-2. (*See generally* Peters Decl.) As set forth in the Declaration of Kristen M. Peters, Defaulting Defendants were each served with a copy of the Summons and Complaint in this action. (*See* Peters Decl. ¶¶ 4-7, 10-13, 15.) Defaulting Defendants failed to appear or otherwise respond to the Complaint within the time prescribed by the Federal Rules of Civil Procedure. (Id.) The Clerk has previously

entered the default of Sultana, Moore & Associates, Veltex Apparel and Veltex Industries on June 30, 2010. (Peters Decl. ¶ 14 and Exh. 20 thereto.) The Clerk has previously entered the default of Matin, Haque, Wilshire and Moore on July 2, 2010. (Peters Decl. ¶ 9 and Exh. 11 thereto.) The Clerk has previously entered the default of Veltex USA on November 2, 2010. (Peters Decl. ¶ 15 and Exh. 24 thereto.) The Complaint filed in this action on March 10, 2010, is the pleading as to which the Clerk entered the defaults of Defaulting Defendants on June 30, 2010, July 2, 2010, and November 2, 2010, and is the pleading on which Plaintiff seeks entry of judgment against Defaulting Defendants.[5] (Peters Decl. ¶ 16.) Defaulting Defendants are not infants or incompetent persons. (Peters Decl. ¶ 17.) Defaulting Defendants are not in military service or otherwise exempt under the Servicemembers Civil Relief Act, 50 App. U.S.C. § 521. (Peters Decl. ¶ 18.) Notice of this Application for Entry of Default Judgment by Court was served on Defaulting Defendants on February 10, 2012, by U.S. Mail, as required by Local Rule 55-2. (*See* Peters Decl. ¶ 20.)

Thus, the Court, in its discretion, may order a default judgment against Defaulting Defendants based on the Eitel factors, as outlined below.

B. The Eitel Factors Support Default Judgment

Entry of a default judgment is governed by Fed. R. Civ. P. 55 and is left to the District Court's sound discretion. *See* Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 498 (C.D. Cal. 2003). The Ninth Circuit has enumerated the following factors (collectively, the Eitel factors) that a Court may consider in determining whether to grant default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the

[5] Although the Clerk of the Court entered the default of Veltex USA as to the FAC, filed on July 16, 2010, the FAC did not include any additional allegations regarding Veltex USA. (Peters Decl. ¶ 15 n.1.)

possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *See* Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.1986). "In applying this discretionary standard, default judgments are more often granted than denied." Philip Morris USA, 219 F.R.D. at 498 (quoting PepsiCo, 238 F. Supp. 2d at 1174).

Upon entry of default by the Clerk of the Court, the factual allegations of the Complaint are taken as true, except for those allegations relating to damages. *See* TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). In determining damages, a Court can rely on the declarations submitted by the Plaintiff or order a full evidentiary hearing. *See* Fed. R. Civ. P. 55(b)(2). "Plaintiff's burden in 'proving up' damages is relatively lenient. If proximate cause is properly alleged in the complaint, it is admitted upon default." Philip Morris USA, 219 F.R.D. at 498. Once injury is established, the plaintiff need only prove that the "compensation sought relates to the damages that naturally flow from the injuries pled." Id.

As set forth below, default judgment is appropriate because Plaintiff has satisfied both the procedural requirements and the substantive Ninth Circuit standard for this Court to exercise its discretion. Specifically, (1) there is a great risk of prejudice to Plaintiff if a default judgment is not issued; (2) Plaintiff's Complaint is meritorious and sufficiently pled; (3) there is no dispute as to the material facts; (4) there is no excuse for Defaulting Defendants' failure to respond or appear in this action; and (5) a decision on the merits is impractical, if not impossible. *See* Eitel, 782 F.2d at 1471-72; PepsiCo, 238 F. Supp. 2d at 1174.

1. Prejudice to Plaintiff

The first Eitel factor weighs in favor of granting Plaintiff's request for an award of monetary damages because if default judgment is not entered, Plaintiff

"will likely be without recourse for recovery." PepsiCo, 238 F. Supp. 2d at 1177.

2. Plaintiff's Claims Are Meritorious and Sufficiency Pled

The second two Eitel factors "require that a plaintiff state a claim on which the [plaintiff] may recover." PepsiCo, 238 F. Supp. 2d at 1175 (citations and quotations omitted). If the complaint meets these requirements, the party seeking a default judgment is entitled to relief. Id. Once a default has been entered by the Court Clerk, as it has in this case, all well-pleaded facts in the complaint are taken as true, except those relating to damages. TeleVideo Sys., 826 F.2d at 917-18.

Here, Plaintiff has filed a well-pleaded Complaint as required by the Federal Rules of Civil Procedure. Plaintiff has alleged sufficient facts to state claims against Defaulting Defendants for (1) Securities Fraud; (2) Fraudulent Transfer and Conveyance; and (3) Conspiracy to Breach and Breach of Fiduciary Duty. Accordingly, this factor favors entry of default judgment against Defaulting Defendants.

a. Plaintiff Has Sufficiently Alleged a Claim for Securities Fraud Against Defaulting Defendants

Plaintiff's Complaint sufficiently alleges a claim for Securities Fraud in violation of Section 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.[6] These provisions give rise to "a private damages action, which resembles, but is not identical to, common-law tort actions for deceit and misrepresentation." Dura Pharm., Inc. v. Broudo, 544 U.S. 336, 341, 125 S. Ct. 1627, 1631 (2005); *see also* Frankel v. Slotkin, 984 F.2d 1328, 1333-34 (1993) ("[A] corporation is injured when it is fraudulently induced

[6] Section 10(b) of the Exchange Act forbids (1) the "use or employ[ment] . . . of any . . . deceptive device," (2) "in connection with the purchase or sale of any security," and (3) "in contravention of" Securities and Exchange Commission ("SEC") "rules and regulations." 15 U.S.C. § 78j(b). Rule 10b-5 forbids, among other things, the making of any "untrue statement of a material fact" or the omission of any material fact "necessary in order to make the statements made . . . not misleading." 17 C.F.R. § 240.10b-5.

into issuing its own securities for less than their fair value because of misappropriation of inside information. Though a corporation's minority shareholders are also injured by dilution of their interests in the corporation, the corporation itself as seller of its own securities suffers an independent injury sufficient to support an action for damages, derivative or otherwise, under section 10(b) and rule 10b-5.").

Here, in support of its securities fraud claim, Plaintiff alleges that:

(1) Defaulting Defendants caused Veltex to issue millions of shares of unrestricted (freely tradeable) common stock. These shares were sold into a public market utilizing several shell entities under the control of Matin or persons acting in concert with him. These shares were not registered with the SEC or any state regulatory authority.

(2) These shares were authorized by the Board of Directors, who were subject to Matin's control and did not function as independent Directors, in furtherance of the fraudulent scheme and no effort was made to assure that the issuance was in compliance with applicable federal and state securities laws.

(3) The shares were issued for zero or inadequate consideration.

(4) As part of the fraudulent scheme, Matin and his co-conspirators issued a series of false and misleading press releases during the relevant period. These press releases were false and misleading in that either (a) they contained false information or (b) they did not contain all information necessary to make the statements made not false and misleading.

(5) Specifically, Matin and his co-conspirators made, among others, the following false or misleading material statements: (a) the Management Defendants misrepresented Veltex' revenues and profits to Veltex' sharesholders and the general investing public (*see* Compl. ¶¶ 32-33, 59); (b) the Management Defendants made inconsistent and misleading statements as to the number of outstanding shares of Veltex (*see* id. ¶¶ 35, 59); (c) the Management Defendants

misrepresented the ownership of textile manufacturing facilities in Bangladesh, (*see* id. ¶¶ 38-40, 61); (d) the Management Defendants made misrepresentations about the sale of the Bangladesh manufacturing facilities (*see* id. ¶¶ 41-47); and (e) the Management Defendants misrepresented that Veltex was having audited financials prepared (*see* id. ¶¶ 48-50, 60-61).

(6) Matin was responsible for the false and misleading information in that either (a) he directly promulgated it and/or (b) was a person in control of the company.

(7) Matin and Defaulting Defendants knew his statements were false.

(8) The statements were promulgated with the intent to affect the price of Veltex stock.

(9) The fraudulent statements were promulgated utilizing instrumentalities of interstate commerce, including the mails, interstate telephone, wire and the Internet.

(10) Matin and his co-conspirators either directly, or through intermediary shell corporations, purchased and sold Veltex common stock to the public, Defaulting Defendants profited from these purchases and sales.

(11) The stock purchases and sales generated by Matin and his co-conspirators were based on information known to Defaulting Defendants and persons acting in concert with them and not disclosed to third-party purchasers.

(12) Matin was the "mastermind" behind the unlawful scheme and plan, and with scienter participated in its accomplishment.

(13) No disclosure has ever been made by Matin, the Management Defendants, or any of the other Defendants of the foregoing false and misleading facts and events to the investing public, and no effort whatsoever was ever made to correct the misleading and blatantly inaccurate information that was provided in the Veltex press releases and other offering materials over a several year period, which was integral to the perpetration and success of the stock scheme.

(14) As a direct and proximate cause of the Defaulting Defendants' misrepresentations and omissions, the stock and going concern value of Veltex has been diminished and eviscerated in an amount of at least $100,078,621, as set forth in the Declaration of Stephen G. Macklem filed herewith.

The above-referenced facts sufficiently set forth Plaintiff's claim against Defaulting Defendants for securities fraud.

b. Veltex Has Sufficiently Alleged a Claim for Fraudulent Transfer and Conveyance Against Matin, Haque and Sultana

Plaintiff's Complaint sufficiently alleges a claim for Fraudulent Transfer and Conveyance in violation of Sections 4(a) and 5(b) of the Uniform Fraudulent Transfer Act ("UFTA"), California Civil Code § 3439.04(a) and (b), against Matin, Haque and Sultana. The UFTA is to be liberally construed to affect its purpose, which is to prevent debtors from placing their assets beyond the reach of creditors. *See* Chichester v. Mason, 43 Cal. App. 2d 577, 584 (1941). California Civil Code § 3439.04 provides that a transfer is fraudulent as to a creditor whether his claim arose before or after the transfer, if the debtor made the transfer (a) with an actual intent to hinder, delay or defraud any creditor or (b) without receiving reasonably equivalent value in return and the debtor intended to or reasonably believed that he would incur debts beyond his ability to pay as they came due. *See* Monastra v. Konica Bus. Machs., 43 Cal. App. 4th 1628, 1635 (1996); *see also* McKnight v. Superior Court, 170 Cal. App. 3d 291, 215 (1985).[7]

The remedies available to a wronged creditor include, among others, (a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim, and (b) ***any other relief the circumstances may require***. *See* Cal.

[7] Actual intent to hinder, delay or defraud is determined to exist as a matter of law where, as here, Defaulting Defendants were engaging in stock fraud. *See, e.g.,* In re Cohen, 199 B.R. 709, 717 (9th Cir. BAP 1996).

Civ. Code § 3439.07(a)(1) and (c) (emphasis added). Similarly, California Civil Code § 3439.08(b)(1) states that in cases where the transfer is voidable, judgment may be had against the transferees of the asset and "the person for whose benefit the transfer was made."

In McKnight v. Superior Court, 170 Cal. App. 3d at 215, the Court observed that because an intent or scheme to defraud creditors is peculiarly within the transferor and transferee's knowledge, it must be determined by the circumstantial evidence presented in the case. The Court deemed the material allegations of a complaint sufficient to establish a *prima facie* case of a fraudulent transfer of real property from a husband to his wife. One of the factors observed by the Court with respect to circumstantial evidence was simply the defendants' close relationship. As the Court stated, when the transferee participates in the fraudulent transfer "with knowledge or intent to assist the transferor to defraud or hinder his creditors, the conveyance is fraudulent even if full consideration is given." Id. at 299.

By failing to respond to the Complaint, Matin, Haque and Sultana have admitted their fraudulent conveyance and misappropriation of Veltex shares and other assets under California Civil Code Sections 3439.04(a)(2) or 3439.05. Further, because Matin, Sultana and Haque are in default, Plaintiff has no meaningful opportunity to engage in discovery and therefore has no ability to trace the number and extent of transfers to Sultana and others who have utilized Plaintiff's funds.[8] Under Section 7(a)(3)(C) of the UFTA, California Civil Code § 3439.07(a)(3)(C), the Court is authorized to award Veltex "[a]ny other relief the

[8] It is well established that a debtor and those who conspire with him to conceal his assets for the purpose of defrauding creditors commit a tort, and each is liable in damages. Cal. Civ. Code §§ 1708, 3439.07; Taylor v. S & M Lamp Co., 190 Cal. App. 2d 700 (1961); QWEST Commc'ns Corp. v. Weisz, 278 F. Supp. 2d 1188 (S.D. Cal. 2003). Indeed, participation in a conspiracy to commit a tort extends liability beyond the principals who actually committed the tort to each of the co-conspirators. Id.; *see also* Monastra, 43 Cal. App. 4th at 1644-45 (participation in a conspiracy to hinder and delay a creditor from recovering upon claims against a debtor renders such conspirators jointly liable with the debtor for the creditor's judgment).

circumstances may require." Accordingly, as set forth in further detail in the Declaration of Stephen G. Macklem, Plaintiff requests that the Court award money damages to Veltex in the amount of $100,078,621, representing Veltex' total damages as the result of the fraudulent conveyance, transfer and conversion of Veltex' stock and inventory to their own use.

c. Plaintiff Has Stated a Claim for Conspiracy to Breach and Breach of Fiduciary Duty Against Matin and Haque

Plaintiff's Complaint sufficiently alleges a claim for Conspiracy to Breach and Breach of Fiduciary Duty against Matin and Haque. Specifically, their conduct, as alleged in the Complaint, constitutes a common law claim for breach of fiduciary duty under the laws of the States of California and Utah.[9] Their conduct is also in violation of specific California and Utah statutes related to corporate governance and management, including but not limited to, Section 300 *et seq.* of the California Corporations Code and the Utah Revised Business Corporation Act, Utah Code Ann. § 16-10a-101 *et seq.*

In his capacity as the controlling shareholder and CEO and Chairman of the Board of Veltex during the relevant period, Matin stood in a fiduciary relationship

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[9] "In order to plead a cause of action for breach of fiduciary duty, a plaintiff must show the existence of a fiduciary relationship, its breach, and damage caused by the breach." Apollo Capital Fund LLC v. Roth Capital Partners LLC, 158 Cal. App. 4th 226, 244 (2007). "A fiduciary relationship is 'any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.'" Wolf v. Superior Court, 107 Cal. App. 4th 25, 29 (2003) (quoting Herbert v. Lankershim, 9 Cal. 2d 409, 483 (1937)). A fiduciary owes a duty of "undivided loyalty" to its beneficiary, and is subject to "fiduciary obligations far more stringent than those required of ordinary contractors." Id. Before a person can be charged with a fiduciary obligation, he "must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law." City of Hope Nat'l Med. Center v. Genentech, Inc., 43 Cal. 4th 375, 386 (2008). Directors and majority shareholders of a corporation stand in a fiduciary relationship of trust and confidence with the corporation and its shareholders. *See* Wolf, 107 Cal. App. 4th at 29; *see, e.g.*, Jones v. H.F. Ahmanson & Co., 1 Cal. 3d 93, 108-09 (1969) (controlling shareholder of corporation).

of trust and confidence with the corporation, Veltex, and its shareholders. (*See* Compl. ¶¶ 5, 81.) Haque, as the Chief Financial Officer ("CFO") and member of the Board of Directors of Veltex since at least 2007, also stood in a fiduciary relationship of trust and confidence with the corporation, Veltex, and its shareholders. (*See* id. ¶¶ 8, 81.) As a result, Matin and Haque owed fiduciary duties of undivided due care and loyalty to Veltex. (*See* id. ¶¶ 80-83.) Matin and Haque were required to serve in good faith, and in the best interests of the corporation and its shareholders, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. Matin was specifically precluded from engaging in intentional misconduct or knowing violations of the law; conduct that was contrary to Veltex' or its shareholder's best interests or involved an absence of good faith; transactions in which he derived an improper personal benefit; reckless disregard for his duty to Veltex or its shareholders when he was aware or should have been aware of the wrongful conduct by other officers, directors or other professionals performing services on behalf of Veltex and the risk of serious injury to Veltex and its shareholders being caused thereby; inexcusable inattention, amounting to an abdication of duty to Veltex and its shareholders; entering into or condoning transactions in which he or other corporate officers or directors have a conflict of interest; and engaging in or condoning prohibited corporate loans or distributions. (*See* Compl. ¶ 81.) Matin and Haque were obligated, among other things, to place Veltex' and its shareholders' interests ahead of any other business or personal interests; being a party to any false statement or entry in the corporate records or to any exaggerated report or other document which would tend to give Veltex greater value than it actually possesses; and knowingly and wilfully issuing shares in violation of the law with the intent to defraud future shareholders or creditors. (*See* id. ¶ 82.)

Matin and Haque breached their fiduciary duties by causing Veltex to engage in, submit to and approve the conduct and transactions described in the

Complaint with respect to actions which caused the dilution of the stock of common shares and the value of Veltex as a going concern, all to the detriment of Veltex, and for the sole and exclusive benefit of Defendants. Matin, as Chairman of the Board of Veltex, suffered from egregious conflicts of interests and engaged in self-dealing which prevented him from exercising independent judgment. Matin's conduct also did not comply with the requirements of the business judgment rule. In diluting the value of Veltex shares, raiding corporate assets and diminishing the overall value of the corporation, Matin and Haque failed to act with the degree of diligence, care, loyalty and skill ordinary prudent persons would exercise under similar circumstances in like positions. (*See* Compl. ¶ 84.)

As a direct and proximate result of Defendants' breaches of fiduciary duties, Veltex has suffered damages in the amount of $100,078,621, as set forth in the Declaration of Stephen G. Macklem.

3. The Sum of Money Sought by Plaintiff Is Not Unreasonable

Under the fourth Eitel factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." PepsiCo, 238 F. Supp. 2d at 1176. "If the sum of money at issue is reasonably proportionate to the harm caused by the defendant's actions, properly documented, and contractually justified, then default judgment is warranted." ACS Recovery Servs., Inc. v. Kaplan, No. 09-01304, 2010 WL 144816, at *6 (N.D. Cal. Jan. 11, 2010). In determining damages, a court can rely on the declarations submitted by the plaintiff. *See* Fed. R. Civ. P. 55(b)(2). Here, Matin masterminded and, with the conscious support of his co-conspirator Defaulting Defendants, carried out an unlawful scheme that resulted in major losses to Plaintiff and investors. Plaintiff is asking for damages in the amount of $100,078,621, which is meant to place Plaintiff in the position it would have been in had Defaulting Defendants not committed acts of fraud, theft and conspired to breach and breached his fiduciary duties to Veltex. (*See generally* Macklem Decl.) As a direct and proximate result

of Defaulting Defendants' fraudulent conveyance, transfer and conversion of Veltex' stock and inventory to their own use, Veltex has suffered damages in the amount of $100,078,621. (*See generally* Macklem Decl.) This is not a large sum under the circumstances, as courts have routinely held that out-of-pocket losses is an appropriate measure of damages for fraud. *See* Ambassador Hotel Co., Ltd. v. WeiChuan Investments, 189 F.3d 1017, 1030 (9th Cir. 1999). That amount is additionally supported by Exhibit A to the Declaration of Stephen G. Macklem, which shows the number of stock transactions that have resulted in Defaulting Defendants' gain. (Macklem Decl. ¶¶ 11-18, 27-34, 40-41, 43 and Exh. A thereto.) Thus, the damages Plaintiff seeks are proportionate to the harm Defaulting Defendants caused and are properly documented. Moreover, given the duration and egregious nature of Defaulting Defendants' misconduct, a default judgment in the amount of $100,078,621 is reasonable. As such, this factor also favors entry of default judgment against Defaulting Defendants.

4. There Is No Dispute As to Material Facts

As to the fifth Eitel factor, by defaulting, Defaulting Defendants are deemed to have admitted all factual allegations contained in the Complaint except those relating to damages. Televideo Sys., 826 F.2d at 917-18; *see also* Philip Morris USA, 219 F.R.D. at 500 (defendants' failure to answer constitutes an admission of the allegations in the complaint, and thus the possibility of dispute in material facts is considered remote); PepsiCo, 238 F. Supp. 2d at 1177 (no genuine possibility of dispute regarding material facts where defendant has failed to answer). Indeed, there is no challenge to Plaintiff's factual averments, which are supported by documents and declarations, because Defaulting Defendants have refused to participate in this action notwithstanding their direct personal knowledge that they are named as defendants. This factor therefore favors granting default judgment.

5. There Was No Excusable Neglect

As to the sixth factor, Defaulting Defendants' default was not excusable. Defaulting Defendants were properly served with the Summons and Complaint, as well as the request to the Clerk of the Court for entry of default and the instant Application for Entry of Default Judgment. (*See* Peters Decl. ¶¶ 4-7, 10-13, 15, 20.) Defaulting Defendants had the opportunity to appear to defend against Plaintiff's claims and to oppose Plaintiff's request for entry of default, but failed to do so. There is nothing in the record indicating that Defaulting Defendants' failure to appear and defend was the result of excusable neglect. For instance, Matin's former counsel, Olesk, a co-defendant in this action, answered the Complaint and Matin's wife accepted service of the Complaint and Summons on Matin's behalf, thus establishing Matin's awareness of the Complaint. Therefore, there is no doubt that the default did not result from excusable neglect, but rather from willful disobedience as evidenced by the failure of Defaulting Defendants to remove the default. Thus, this factor weighs in favor of entry of default judgment.

6. The Policy of the Federal Rules Would Be Undermined If Judgment Is Not Granted

The final Eitel factor examines whether the policy of deciding a case based on its merits precludes entry of default judgment. In Eitel, the Ninth Circuit acknowledged that the general rule is that default judgements are ordinarily disfavored and that courts should decide cases on their merits whenever possible. *See* Eitel, 782 F.2d at 1472. However, this factor is not dispositive, and the Court has "great latitude in exercising its discretion with regard to the relative weight of the remaining Eitel factors." PepsiCo, 238 F. Supp. 2d at 1177.

Here, Defaulting Defendants, by their own actions in failing to answer Plaintiff's Complaint, make a decision on the merits impractical, if not impossible. *See* PepsiCo, 238 F. Supp. 2d at 1177. This is precisely what has occurred in the instant case. Defaulting Defendants made a conscious choice not to participate in

this lawsuit. There is no remedy other than default. Accordingly, because Defaulting Defendants have failed to participate in the proceedings brought against them, despite adequate and repeated notice and opportunity to do so, default judgment is appropriate.

IV. THE COURT SHOULD AWARD PLAINTIFF DAMAGES IN THE SUM OF $100,078,621, PLUS PREJUDGMENT INTEREST, ATTORNEYS' FEES AND COSTS

The Clerk has entered default against Defaulting Defendants. The allegations in the Complaint are now deemed admitted. Therefore, as set forth in the Declarations of Kristen M. Peters and Stephen G. Macklem, Plaintiff respectfully requests that the Court grant default judgment against Defaulting Defendants and award damages to Plaintiff in the sum of $100,078,621, plus prejudgment interest, attorneys' fees and costs as follows:

(a)	Damages, in the amount of:	$100,078,621.00
(b)	Prejudgment Interest[10] of:	$ 751,738.99 ($1,069.33/day)
(c)	Attorneys' Fees pursuant to L.R. 55-3[11] in amount of:	$ 2,005,172.42

[10] Section 1961 of Title 28 provides for interest to accrue on judgments entered in federal court from the date of entry at the rate specified in the statute. The award of prejudgment interest is generally in the discretion of the Court. *See* Donell v. Kowell, 533 F.3d 762, 772 (9th Cir. 2008) (prejudgment interest may be awarded from the date each fraudulent transfers were made). Because applicable law permits prejudgment interest from the date of the transfers, here, it is reasonable for the Court to award prejudgment interest from March 10, 2010, the date of filing of the lawsuit. The Declaration of Kristen M. Peters sets forth the federal statutory rate applicable on the date of filing of the lawsuit and the interest accruing on the damages amount through February 10, 2012, and the per diem rate accruing thereafter pursuant to 28 U.S.C. § 1961. (*See* Peters Decl. ¶ 17.)

[11] Plaintiff is entitled to attorneys' fees pursuant to 15 U.S.C. § 78r(a). Central District Local Rule 55-3 directs the Court to calculate attorneys' fees according to a schedule if allowed by applicable statute. For awards greater than $100,000.00, the attorneys' fees are calculated at $5,600.00 plus 2% of the amount over $100,000.00, or: [Total Award - $100,000] * [0.02] + $5,600. Application of the formula to this case gives: [$100,078,621 - $100,000]*[0.02] + $5,600 = $2,005,172.42. Thus, applying the schedule to the amount of the judgment exclusive of costs, Plaintiff is entitled to $2,005,172.42 in attorneys' fees. (Peters

(d) Costs and Expenses[12] of: $ 3,859.95

TOTAL **$102,839,392.36**

In addition, Plaintiff requests punitive damages against Defaulting Defendants in an amount sufficient to punish, deter and make an example of them.[13]

V. CONCLUSION

As has been shown above, Plaintiff has met its pleading burden to establish the liability of Defaulting Defendants in this case under the rule that in a default prove up, all well-pleaded allegations must be accepted as true, except those dealing with damages. Plaintiff has offered the Declaration of Stephen G. Macklem to prove damages. In light of the above, Plaintiff respectfully requests

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Decl. ¶ 16.)

[12] Plaintiff is entitled to costs under Fed. R. Civ. P. 54(d). Within fifteen (15) days after the entry of judgment, Plaintiff will electronically file a Notice of Application to the Clerk to Tax Costs and [Proposed] Bill of Costs on Form CV-59. *See* L.R. 54-3.

[13] Punitive damages may be awarded as part of a default judgment award. *See, e.g.*, Bennett v. American Medical Response, Inc., No. 05-35475, 2007 WL 900989 (9th Cir. March 27, 2007), and are available "[i]n an action for the breach of an obligation not arising from contract" upon a finding of "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Accordingly, because Defaulting Defendants acted with malice, oppression, or fraud, Plaintiff may recover punitive damages against them.

that the Court enter judgment for Plaintiff in the amount of $100,078,621, plus prejudgment interest, attorneys' fees and costs.

Dated: February 10, 2012

Respectfully submitted,

BLECHER & COLLINS, P.C.
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MARYANN R. MARZANO
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By: /s/ Maryann R. Marzano
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